BOOK REVIEWS.

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THE HAGUE CONFERENCES OF 1899 AND 1907. By JAMES BROWN SCOTT. Baltimore: THE JOHNS HOPKINS PRESS. 1909. 2 Vols. Vol. I, pp. xiv, 887; Vol. II, pp. vii, 548.

This study consists of the lectures given at the Johns Hopkins University by Professor Scott, who enjoyed the high distinction of being the legal authority of the American Delegation to the Second Hague Conference; and also that of being the chief law officer of our Foreign Office both before and after the Conference met. Professor Scott has had exceptional opportunity to orient himself in the history and problems of the international law with which the late Hague Conference was occupied. As an officer, he had access to the State Department archives in preparing the data which our Delegation was to use at the Conference. As a member of the Conference, he heard all the various points of view discussed by the Delegates of the forty-four states which participated. As author, since the Conference, he has had several months to reduce the results of his investigations, experience and thought to systematic form, and he states that the original "lectures have been carefully revised."

The work consists of two large volumes. One volume is a compilation of documents, and the other (besides containing more documents) has 751 pages by the author; but, of these pages, about one-third (some 225 pages) is quoted from documents and the writings of others. In the remaining two-thirds there is evidence of a close adherence to the text of other authors. For example:

Merignhac writes (p. 4828, Moore, Int. Arb.).[1]

The parliaments of France, renowned for their wisdom and equity, were chosen to settle disputes between foreign sovereigns. * * * Again, some eminent jurisconsult was employed, specially renowned for his juridical knowledge. The doctors of the Italian universities of Perugia and Padua, and particularly the celebrated University of Bologna, were, says Wheaton, * * * often employed as diplomatists or arbitrators to settle conflicts between the different states of Italy.

Scott writes, p. 204:

The parliaments of France, "renowned for their wisdom and equity" were chosen to settle disputes between foreign sovereigns * * * There are not a few instances of arbitration by eminent jurists. The doctors of the Italian universities of Perugia and Padua, and particularly the celebrated University of Bologna were often employed as diplomatists or arbitrators to settle conflicts between the different States of Italy.

Merignhac writes (p. 4830, Moore, Int. Arb.)

The arbitral clause, or stipulation for the arbitration of difficulties that may arise, does not

Scott writes, p. 207:

The clause compromissoire, that is, the agreement to arbitrate future difficulties, does not appear to have been frequent in

[1]Moore's translation of Merignhac is used and cited twenty-five times, between pp. 194-210, for quotations and "instances."

appear to have been frequent in the Middle Ages, or in later times, * * * It seems, however, to have been in use between the commercial cities of Italy * * * We may cite two applications of it in the case of the cities of Italy and the Swiss Cantons. In a treaty of alliance concluded in 1235 between Genoa and Venice, there is an article which reads as follows:

the Middle Ages, or, indeed, in later times. It appears, however, to have been employed by the commercial cities of Italy and Switzerland.[2] Two instances may be cited: In a treaty of alliance concluded in 1235 between Genoa and Venice there is an arbitration clause which reads as follows:

Perhaps this is not improper; it is certainly making use of the research and felicitous wording of another without making the acknowledgment which authors usually recognize as required. Professor Scott sums up his quoting and copying of Merignhac by saying (p. 208-9) "It is thus seen that arbitration was frequently resorted to in the Middle Ages, but, * * * If examined carefully they cannot be said to be arbitration in the strict sense of the word * * * M. Merignhac is therefore justified by theory as well as fact when he states and illustrates," etc. Does not Professor Scott intend that the reader shall infer that he has "examined carefully", possibly more "carefully" than Marignhac, the arbitrations of the Middle Ages? Otherwise why does Professor Scott say that "M. Merignhac is therefore justified"? We note, too, that the authorities cited by the authors whom Professor Scott quotes or copies are sometimes cited by him without the appropriate acknowledgment; thus he cites (p. 202) Du Mont, Schmaus, Kluber et Ott, (p. 204) De Flassen Hall, 4th ed., and (p. 207) Vattel without expressly stating "as cited by," etc.[3] Lack of space precludes further illustrations of this sort, but indications are not wanting to show that a free use has been made of Holls (pp. 47-87) and Moore (pp. 210-248).

The general outline of the book is well devised to present the essential facts associated with the two Peace Conferences. In the first third of the book, we have the historical side of the subject; in the second part, about 500 pages are devoted to a "presentation of the positive results of the conferences," *i. e.*, the conventions, signed and unsigned declarations, resolutions and *voeux* of both Conferences are "expounded" by a "method", which we are told is "analytical and philosophical in its nature." For the manner in which this general outline is developed, we may note a few of the things which are written about international arbitration, the topic which appears to have the author's primary interest, and therefore, most justly taken as evidencing the character and value of his work. Germany is spoken of (p. 128) as "unwilling to enter into a general treaty of arbitration with all nations for the arbitration of all subjects." Is there any nation to-day that is not "unwilling"? Indeed, the author states (p. 330) that Germany negotiated a treaty of arbitration with the United States which "was unfortunately not ratified by the Senate." However, it

[2]Here is a characteristic example of the author's paraphrasing; instead of arbitrations between the Swiss Cantons, one might suppose it was between the commercial cities of Switzerland!

[3]Moore, Int. Arb. Vol. V, and the page on which these citations appear is given, but in such way as to indicate that it is merely an additional citation.

is soberly written (p. 128) that "Germany's triumph, was at best, a Phyrric victory." The "idea" of the Permanent Court, established by the First Conference, is declared to be "erroneous". Among the reasons advanced by Professor Scott is the fact that this Court was made "competent for all arbitration cases"; (p. 424) therefore it may decide questions of "a non-judicial nature," and its decisions may be made by "arbiters, chosen by the parties in the controversy." Elsewhere, however, (p. 188) Professor Scott has assured us that (p. 259) arbitration "decides a controversy according to principles of law." In fact, he has pointed out what is the "essence of arbitration": in one place (p. 189), the "essence of arbitration is the voluntary nature of the proceeding;" in another, (p. 275) the "essence of arbitration is the settlement of disputes between states by judges of their own choice on the basis of respect for law." But the author has a remedy for what is "erroneous." It is the *voeu* of the Second Conference proposing "a court of arbitral justice;" by means of it "the idea of a permanent court thus triumphed;" this "is a court in essence and in fact;" it is "the ideal Tribunal." True, it is (p. 130) "a court without judges, but judges will enter in the fullness of time." And besides the Prize Court (given the form of a convention by the Conference) "is a court without law." "But," the author hastens to add, "the nations can as easily supply the law for a prize court as they will the judges for the Court of Arbitration." As to "the law for" the Court of Arbitration, we are nowhere told whether it is completely supplied or whether none is required. Nowhere have we found a clear, exact expression of the author's own views as to the present possibilities of international arbitration.

As a whole the publication is not a credit to American scholarship, and in parts the methods of composition do not command respect. The author is undoubtedly an efficient public officer and successful lecturer. Our criticism is directed solely to his book. There is hardly a page which does not furnish some evidence of an incorrect apprehension of facts, of a misunderstanding of the matter quoted, of inconsequential reasoning, of extravagant and misleading statements. The method of presentation is prolix, unsystematic and altogether lacking in juridical exactness. For the failures in fairly correct English composition, the ungrammatical and jumbled sentences, the effusive and common-place diction, and the unmeaning loquacity, we ask those interested to examine almost any page of the author's writing. However, the documents and writings of others which he has compiled will be useful and convenient.

J. P. C.

THE COURTS OF THE STATE OF NEW YORK. By HENRY W. SCOTT. New York: WILSON PUBLISHING CO. 1909. pp. 506.

The examination of this volume has resulted in a feeling of disappointment. A carefully prepared work on the history and the present constitution of the courts of the State based upon some definite scheme of classification according to jurisdiction of subject-matter and territorial jurisdiction, with a systematic treatment founded upon such classification, would be extremely useful and convenient; but the volume under consideration is not of this character. The author states "as one of the causes leading up to the production of this work, that one of the first things to occupy his attention" in coming